European Court of Human Rights: Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland

IRIS 2015-8:1/1

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After proceedings at national level over eight years, and after a preliminary ruling by the Court of Justice of the European Union (CJUE) on 16 December 2008 (Case C-73/07), the European Court of Human Rights (ECtHR) has delivered a judgment in a highly interesting case of conflicting rights between the right of privacy and the right to freedom of expression, in the domain of protection of personal data and data journalism. The Court has come to the conclusion that a prohibition issued by the Finnish Data Protection Board that prohibited two media companies (Satakunnan Markkinapörssi Oy and Satamedia Oy) from publishing personal data in the manner and to the extent Satamedia had published this data before, is to be considered a legitimate interference in the applicants' right to freedom of expression and information. More precisely, the Finnish authorities forbade Satamedia from collecting, saving and processing to a large extent taxation data, with the result that an essential part of the information published in the applicant's magazine Veropörssi could no longer be published and an SMS-service was discontinued. The ECtHR agrees with the Finnish authorities that the applicants could not rely on the exception of journalistic activities, as the publication of the large amount of taxation data by Satamedia was not justified by a public interest. The Court accepts the approach of the Finnish Supreme Administrative Court that it was necessary to interpret Satamedia's freedom of expression strictly, in order to protect the right of privacy of Finnish citizens.

The European Court recognises, however, the general subject-matter, which was at the heart of the publication in question; namely the taxation data about natural persons' taxable income and assets, while such data are a matter of public record in Finland, available to everyone. The Court agrees that as such this taxation information was a matter of public interest. The Court also emphasises that such data is public in Finland, in accordance with the Act on the Public Disclosure and Confidentiality of Tax Information, and that there was no suggestion that Satamedia had obtained the taxation data by subterfuge or other illicit means. The Court equally observes that the accuracy and reliability of the published information was not in dispute. According to the European Court the only problematic issue was the scale of the published information by Satamedia, as the Veropörssi magazine had published in 2002 taxation data on 1.2 million persons. According to the domestic authorities, the publishing of taxation information to such an extent could not be considered journalism, but the processing of personal

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data which Satamedia had no right to do. The Court's judgment also contains a reference to the preliminary ruling of the CJUE of 16 December 2008, which found that the activities of Satamedia related to data from documents which were in the public domain under Finnish legislation, and could be classified as "journalistic activities" if their object was to disclose to the public information, opinions or ideas, irrespective of the medium which was used to transmit it.

Leaving a broad margin of appreciation, the European Court of Human Rights accepts the finding by the Finnish authorities that the publication of personal data by Satamedia could not be regarded as journalistic activity, in particular because the derogation for journalistic purpose in the Personal Data Act (see also Article 9 of Protection of Personal Data Directive 95/46/EC of 24 October 1995) was to be interpreted strictly. The European Court is of the opinion that the Finnish judicial authorities have attached sufficient importance to Satamedia's right to freedom of expression, while also taking into consideration the right to respect for private life of those taxpayers whose taxation information had been published. The Court finds that the restrictions on the exercise of Satamedia's freedom of expression were established convincingly by the Supreme Administrative Court, in line with the Court's case law. In such circumstances the Court would require strong reasons to substitute its own view for that of the domestic courts.

The Court finally notes that Satamedia was not prohibited generally from publishing the taxation information about private persons, but only to a certain extent. The fact that the prohibition issued lead to the discontinuation of Veropörssi magazine and Satamedia's SMS-service was, according to the Court, not a direct consequence of the interference by the Finnish authorities, but of an economic decision made by Satamedia itself. The Court also takes into account that the prohibition laid down by the domestic authorities was not a criminal sanction, but an administrative one, and thereby a less severe sanction. Having regard to all the foregoing factors, and taking into account the margin of appreciation afforded to the State in this area, the Court considers that the domestic courts struck a fair balance between the competing interests at stake. Therefore there has been no violation of Article 10 of the European Convention on Human Rights (ECHR). Only one judge dissented, emphasising that the majority's approach does not follow the established case law of the Court, finding a violation of Article 10 in cases where national authorities have taken measures to protect publicly available and known information on matters of public interest from disclosure. The dissenting opinion also states that no negative effect or harm was identified as having been inflicted upon any individual, nor had society been otherwise imperilled through the publication of the taxation data at issue. It states further that "regrettably, the majority agreed with the respondent state that the applicant companies' activities did not fall within the exception for the purposes of journalism in the Personal Data Act", and that this can lead to an interpretation "that journalists are so limited in processing data that the entire journalistic

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activity becomes futile (..), particularly in the light of the dynamic and evolving character of media".

Apart from rejecting the applicants' arguments with regard to their right to freedom of expression and information under Article 10 of the ECHR, the Court also rejected Satamedia's claim that Article 14 of the ECHR had been violated. Satamedia had argued that they had been discriminated against vis-à-vis other newspapers, which had been able to continue publishing the taxation information in question. According to the European Court, Satamedia could not be compared with other newspapers publishing taxation data, as the quantity published by them was clearly greater than elsewhere. Therefore Satamedia's situation was not sufficiently similar to the situation of other newspapers, and hence there was no discrimination within the terms of Article 14 of the ECHR. Indeed, in order for an issue to arise under Article 14 of the ECHR, there must be a difference in treatment in relevantly similar situations, which was not the case in this context. The European Court found this part of the application manifestly ill-founded and therefore inadmissible.

The Court did find however a violation of Article 6 § 1 of the ECHR (fair trial) in this case, as the length of the proceedings at domestic level (six years and six months) was excessive and failed to meet the "reasonable time" requirement, even taking into account the complexity of the case.

Judgment by the European Court of Human Rights (Fourth Section), case of Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, Application no. 931/13 of 21 July 2015

https://hudoc.echr.coe.int/eng?i=001-156272

Judgment of the Court (Grand Chamber) in Case C-73-07 Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy, 16 December 2008

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d5c525b41ecd9f4b158aa5a86fc7cd8257.e34KaxiLc3eQc40LaxqMbN4ObNaPe0?text=&docid=76075&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=646994

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